

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW JEFFERIES,

Petitioner,

v.

KEN CLARK,

Respondent.

No. 2:20-cv-2414-DAD-KJN (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PETITION FOR HABEAS RELIEF ON THE
MERITS

(Doc. Nos. 23, 40)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 26, 2023, the assigned magistrate judge issued findings and recommendations recommending that the pending petition for federal habeas relief be denied on the merits. (Doc. No. 40.) The findings and recommendations were served on petitioner with notice that any objections thereto were to be filed within fourteen (14) days of the date of their service. Petitioner's objections to the pending findings and recommendations were received by the court on May 15, 2023 (Doc. No. 41) and are deemed timely filed. Respondent has not filed any reply to petitioner's objections or motions.

Petitioner's objections to the pending findings and recommendations are, for the most part, a rehash of some but not all of the arguments he presented in his first amended petition (Doc

1 No. 23) and in his reply to respondent's answer (Doc. No. 36). None of the arguments presented
2 in those objections provides any basis to question the analysis set forth in the findings and
3 recommendations which appropriately addressed each of petitioner's contentions on the merits.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
5 *de novo* review of the case. Having carefully reviewed the entire file, including petitioner's
6 objections, the undersigned concludes that the magistrate judge's findings and recommendations
7 are supported by the record and proper analysis. Therefore, the findings and recommendations
8 will be adopted and petitioner's request for federal habeas relief will be denied on the merits of
9 his presented claims.

10 In his objections, petitioner also requests the issuance of a certificate of appealability.
11 The court, however, declines to issue a certificate of appealability. A petitioner seeking a writ of
12 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an
13 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
14 (2003); 28 U.S.C. § 2253. If a court denies a habeas petition on the merits, the court may only
15 issue a certificate of appealability "if jurists of reason could disagree with the district court's
16 resolution of [the petitioner's] constitutional claims or that jurists could conclude the issues
17 presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327;
18 *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the petitioner is not required to
19 prove the merits of his case, he must demonstrate "something more than the absence of frivolity
20 or the existence of mere good faith on his . . . part." *Miller-El*, 537 U.S. at 338. In the present
21 case, the court concludes that reasonable jurists would not find the court's determination that the
22 petition should be denied debatable or wrong, or that the issues presented are deserving of
23 encouragement to proceed further. Petitioner has not made the required substantial showing of
24 the denial of a constitutional right. Therefore, the court will decline to issue a certificate of
25 appealability.

26 Accordingly:

27 1. The findings and recommendations issued April 26, 2023 (Doc. No. 40), are
28 adopted in full;

- 1 2. The first amended petition for writ of habeas corpus (Doc. No. 23) is denied;
- 2 3. The court declines to issue a certificate of appealability (28 U.S.C. § 2253(c)); and
- 3 4. The Clerk of the Court is directed to close this case.

4 IT IS SO ORDERED.

5 Dated: July 19, 2023

Dale A. Droyd
6 UNITED STATES DISTRICT JUDGE

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